IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 3663/1999

SHIV SINGH Vs. THE STATE OF RAJASTHAN & ORS.

Date: 31.10.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. M.M. Mehrishi for the petitioner.
Mr. B.S. Chhaba, Addl. GA for the respondents.

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The matter comes up on the application for taking documents on record. Both the parties are agreed that the matter may be heard finally at this stage.

This writ petition is directed against the dismissal order 02.11.98 and appellate order dated 27.05.99.

Brief facts of the case are that the petitioner was appointed as a Constable in District Dausa vide order dated 30.03.93. In the year 1996 enquiry was initiated against the petitioner and vide order dated 18.07.96 the petitioner was put under suspension by S.P. Dausa. While the petitioner was under suspension, he was arrested by the Police Station Dausa on 03.10.97 under Section 34 of the Police Act on the allegations that the petitioner under intoxication

created obstruction to traffic, hurled abuses and made hue and cry. The petitioner was medically examined and it was found that the petitioner was smelling of alcohol but was not under its influence. Thereafter compliant was filed against the petitioner under Section 34 of Police Act and the same is pending with the trial Court. Besides criminal complaint, the respondents initiated departmental enquiry against the petitioner under Rule 16 of the CCA Rules vide order dated 07.11.97 and the petitioner was served with the charge-sheet. In the enquiry after following the due process and after issuing show cause notice to the petitioner, the disciplinary authority found the charges levelled against the petitioner fully proved and penalty of dismissal from service vide order dated 02.11.98 was imposed. Against the said order dated 02.11.98 passed by the disciplinary authority, the petitioner preferred appeal and the appellate authority while upholding the dismissal order of the petitioner, rejected the appeal vide order dated 27.05.99.

In this writ petition the petitioner challenged the said dismissal order dated 02.11.98 and the appellate authority's order dated 27.05.99 on the ground that the offence alleged to be committed by the petitioner was committed when he was under suspension

and was not on duty. Since there is no law which prohibits use of alcohol, therefore, the petitioner has not committed any mistake and no offence is made out against him. It is also alleged that the respondents have not followed bare minimum principle of natural justice.

Per contra, learned counsel for the respondent State submits that the petitioner was suspended as he was chargesheeted for offence under Sections 166, 167, 342, 330 and 304 IPC in case No. 65/95 registered at P.S. Kathumar, Distt. Alwar. It is also submitted that the conduct of the petitioner being a constable of the disciplined force is serious in nature as the petitioner created obstruction to the traffic near police station Kotwali, Dausa under the influence of liquor and also hurled abuses and raised hue and cry and for that offence the petitioner was arrested on 03.10.97 under Section 34 of the Police Act and the case is pending with the trial Court. Further it is denied that opportunity of being heard was not provided to the petitioner and the disciplinary authority has not followed the bare minimum principle of natural justice. It is also submitted that at the relevant time, the petitioner was in sub-jail at Hindaun City facing trial in criminal cases pending against him. The

petitioner was facing trial in criminal case No. 607/98 for offence under Section 302 IPC and criminal case No. 733/1998 also for offence under Section 302 IPC at Sessions Court, Hindaun City and was in judicial custody from 29.09.98 to 31.05.99.

Looking to the facts and circumstances of the case and the conduct of the petitioner, being habitual offender such person in the considered view of the Hon'ble Supreme Court and of this Court, should not be allowed to continue as Constable in the police force.

I have also carefully gone through the impugned order passed by the disciplinary authority dated 02.11.98 as well as the order of the appellate authority dated 27.05.99. Both the authorities have considered all aspects and upon consideration of the facts and the charges found proved against the petitioner, passed the order of dismissal from service, which is justified and requires no interference by this Court.

Consequently, the writ petition fails and the same is hereby dismissed.

The application for taking documents on record also stands rejected.

(K.S. RATHORE),J.

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